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Recommendation (1)

Section 403 of the National Security Act of 1947 should be amended in the form set forth in Appendix VI to this Report. (Reproduced in full on following page.) These amendments, in summary, would:

a. Make explicit that the CIA's activities must be related to foreign intelligence.

b. Clarify the responsibility of the CIA to protect intelligence sources and methods from unauthorized disclosure. (The Agency would be responsible for protecting against unauthorized disclosures within the CIA, and it would be responsible for providing guidance and technical assistance to other agency and department heads in protecting against unauthorized disclosures within their own agencies and departments.)

c. Confirm publicly the CIA's existing authority to collect foreign intelligence from willing sources within the United States, and, except as specified by the President in a published Executive Order[1] prohibit the CIA from collection efforts within the United States directed at securing foreign intelligence from unknowing American citizens.

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[1]The Executive Order authorized by this statute should recognize that when the collection of foreign intelligence from persons who are not United States citizens results in the incidental acquisition of information from unknowing citizens, the Agency should be permitted to make appropriate use or disposition of such information. Such collection activities must be directed at foreign intelligence sources, and the involvement of American citizens must be incidental.

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Note: Appendix VI of the Commission Report provides:

In Recommendation (1), the Commission proposes that 50 U.S.C. Section 403(d) be amended to read (Additions are italicized; deletions are marked through):

(d) For the purpose of coordinating the foreign intelligence activities of the several government departments and agencies in the interest of national security, it shall be the duty of the (Central Intelligence) Agency, under the direction of the National Security Council--

(1) to advise the National Security Council in matters concerning such foreign intelligence activities of the government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such foreign intelligence activities of the departments and agencies of the government as relate to the national security;

(3) to collect, correlate and evaluate foreign intelligence relating to the national security, and provide for the appropriate dissemination of such foreign intelligence within the government using where appropriate existing agencies and facilities:

Provided, that except as specified by the President in a published Executive Order, in collecting foreign intelligence from United States citizens in the United States or its possessions, the Agency must disclose to such citizens that such intelligence is being collected by the Agency.

Provided further, that the Agency shall have no police, subpoena, law enforcement powers, or internal security functions:

Provided further, that the departments and other agencies of the government shall continue to collect, evaluate, correlate and disseminate departmental intelligence:

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~~And provided further, that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;~~

(4) to perform, for the benefit of the existing intelligence agencies, such additional foreign intelligence services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to foreign intelligence affecting the national security as the National Security Council may from time to time direct.

(6) to be responsible for protecting sources and methods of foreign intelligence from unauthorized disclosure. Within the United States, this responsibility shall be limited (a) to lawful means used to protect against disclosure by (i) present or former employees, agents or sources of the Agency or (ii) persons, or employees of persons or organizations, presently or formerly under contract with the Agency or affiliated with it, and (b) to providing guidance and technical assistance to other government departments and agencies performing intelligence activities.

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Response

I fully concur in the recommendation of the Commission that the National Security Act be amended to clarify the duties of the Agency by inserting the word "foreign" before the word "intelligence" at appropriate places in the Act. In fact, this suggestion first arose at my confirmation hearing in 1973.

I concur with the added provisions clarifying the Agency's role in the collection of foreign intelligence from US citizens.

I have reservations about the proposal of the Commission to amend the Act to shift from the Director of Central Intelligence to the Central Intelligence Agency, responsibility for protecting intelligence sources and methods from unauthorized disclosure. The DCI, as head of the Intelligence Community, is well placed to protect the Community's interest in sources and methods of foreign intelligence, but CIA is less well suited to cover these matters as they affect other agencies. The proposed amendment could be read to diminish the DCI's coordinating function in the Intelligence Community. I believe the purpose of the Commission in recommending the change can be carried out by retaining some of the limitations in the proposed subparagraph (6) but assigning the responsibility to the Director of Central Intelligence.

In addition, changing the wording from "protecting intelligence sources and methods from unauthorized disclosure" to "protecting sources and methods of foreign intelligence from unauthorized disclosure" eliminates terminology which is well recognized and for which there is judicial interpretation and precedent in several cases.

I am also concerned that subparagraph (6) may not afford sufficient authority to protect intelligence sources and methods information under the Freedom of Information Act. That Act exempts from its mandatory exposure provisions matters "specifically exempt from disclosure by statute." Appropriate language should be included in subparagraph (6) to make clear that that subparagraph is an exemption statute for Freedom of Information purposes.

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Recommendation (2)

The President should by Executive Order prohibit the CIA from the collection of information about the domestic activities of United States citizens (whether by overt or covert means), the evaluation, correlation, and dissemination of analyses or reports about such activities, and the storage of such information, with exceptions for the following categories of persons or activities:

a. Persons presently or formerly affiliated, or being considered for affiliation, with the CIA, directly or indirectly, or others who require clearance by the CIA to receive classified information;

b. Persons or activities that pose a clear threat to CIA facilities or personnel, provided that proper coordination with the FBI is accomplished;

c. Persons suspected of espionage or other illegal activities relating to foreign intelligence, provided that proper coordination with the FBI is accomplished.

d. Information which is received incidental to appropriate CIA activities may be transmitted to an agency with appropriate jurisdiction, including law enforcement agencies.

Collection of information from normal library sources such as newspapers, books, magazines and other such documents is not to be affected by this order.

Information currently being maintained which is inconsistent with the order should be destroyed at the conclusion of the current congressional investigations or as soon thereafter as permitted by law.

The CIA should periodically screen its files and eliminate all material inconsistent with the order.

The order should be issued after consultation with the National Security Council, the Attorney General, and the Director of Central Intelligence. Any modification of the order would be permitted only through published amendments.

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Response

I concur in this recommendation.

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Recommendation (3)

The President should recommend to Congress the establishment of a Joint Committee on Intelligence to assume the oversight role currently played by the Armed Services Committees.

Response

As you know, I concur in this recommendation.

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Recommendation (4)

Congress should give careful consideration to the question whether the budget of the CIA should not, at least to some extent, be made public, particularly in view of the provisions of Article I, Section 9, Clause 7 of the Constitution.[1]

Response

In the past I have taken the position that this question should be resolved by the Congress but that I could not in good conscience recommend publication of all or part of the intelligence budget. I believe I must now recommend that the Agency budget and certain classified intelligence programs of the Department of Defense remain fully classified and nonidentifiable. I do this despite the recommendation of the Commission and its reference to Article 1, Section 9, Clause 7, of the Constitution.

With respect to the constitutionality of the present procedure, a recent attempt to litigate this question did not reach the substance; the litigant having been defeated on the issue of standing to sue. Richardson v. United States, 418 U.S. 166 (1974). There is, however, considerable historical precedent for budget secrecy, going back to debates in the Constitutional Convention, the use of a secret fund during the administrations of Washington and Madison, and a secret appropriations act in 1811. Congress most recently endorsed the secrecy of intelligence budgets in June 1974 when the Senate rejected an amendment to the Department of Defense Appropriations Act of 1975 which would have required that the total budget figure for intelligence purposes be made public. In addition, I believe that present procedures are fully in accord with the Constitution. Agency appropriations are an integral part of appropriations made by law and are reflected in the Treasury's Statement and Account of Receipts and Expenditures in compliance with the cited provisions of the Constitution.

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[1] "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

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On the merits of the question, aside from the constitutionality, my belief that this budget should remain secret is based on the following:

a. Public disclosure of Intelligence Community budget data, or the budgets of the individual agencies which make up the Intelligence Community, could provide potential enemies with considerable insight into the nature and extent of our activities.

b. Publication of part of the budget, as suggested by the Commission, would raise, in my view, extensive congressional debate as to what matters were included and what matters were not included in the published totals, leading to a rapid erosion of the secrecy of the portions withheld.

c. The same question would immediately arise with respect to the publication of the total CIA budget, a total Community budget, or any other figure covering "intelligence." An immediate requirement would be levied to explain precisely which of our intelligence activities were covered in the published total and which were not. As you know, this is a difficult matter to determine within classified circles due to the difficulty of determining at what point intelligence expenditures stop and operational expenditures begin (the radar on a destroyer; tactical air reconnaissance on the battlefield; the reporting as differentiated from the representational and other functions of attaches, foreign service officers; etc.).

d. Publication of any single figure with respect to intelligence would, in my view, quickly initiate curiosity and investigation by the press and others as to exactly how the figure was arrived at and what its component elements were. This is suggested by the history of disclosure of AEC budget materials and related information by both the Executive Branch and the Congress.

e. Publication of any figure with respect to intelligence will result in questions and discussions of any changes or trends developed in succeeding year figures. Any change in the basis on which the figure was computed or any change in its level will generate a demand for explanation and tend to reveal the details of the figure and programs supported by it.

Thus, I must recommend that the CIA budget and certain other highly sensitive intelligence programs remain classified and nonidentifiable in the Department of Defense budget.

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Recommendation (5)

a. The functions of the President's Foreign Intelligence Advisory Board should be expanded to include oversight of the CIA. This expanded oversight board should be composed of distinguished citizens with varying backgrounds and experience. It should be headed by a full-time chairman and should have a full-time staff appropriate to its role. Its functions related to the CIA should include:

1. Assessing compliance by the CIA with its statutory authority.

2. Assessing the quality of foreign intelligence collection.

3. Assessing the quality of foreign intelligence estimates.

4. Assessing the quality of the organization of the CIA.

5. Assessing the quality of the management of the CIA.

6. Making recommendations with respect to the above subjects to the President and the Director of Central Intelligence, and, where appropriate, the Attorney General.

b. The Board should have access to all information in the CIA. It should be authorized to audit and investigate CIA expenditures and activities on its own initiative.

c. The Inspector General of the CIA should be authorized to report directly to the Board, after having notified the Director of Central Intelligence, in cases he deems appropriate.

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Response

I fully concur with this recommendation. I have the highest regard for the contribution the PFIAB has made to the improvement of the intelligence structure of our Government to date, and I look forward to the Board's specific supervision and independent assessment of our performance and management in the future. I also concur that the Inspector General of the CIA report directly to the Board after notifying the Director of Central Intelligence in any case which he deems appropriate. I have undertaken the commitment to the PFIAB not only to be responsive to their inquiries but also to raise with them matters of which they might not be aware of which they should be informed. The recommendation of the Commission would substantially increase the role and supervision of the Board, a step which I would welcome.

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Recommendation (6)

The Department of Justice and the CIA should establish written guidelines for the handling of reports of criminal violations by employees of the Agency or relating to its affairs. These guidelines should require that the criminal investigation and the decision whether to prosecute be made by the Department of Justice, after consideration of Agency views regarding the impact of prosecution on the national security. The Agency should be permitted to conduct such investigations as it requires to determine whether its operations have been jeopardized. The Agency should scrupulously avoid exercise of the prosecutorial function.

Response

I fully endorse this recommendation. The procedure in effect since 1954, whereby the Agency determined whether there were security considerations which would prevent a successful prosecution, was abandoned in December of last year; the Commission recommendation reflects the de facto situation since then. It should be pointed out that the type of case envisioned under the former procedure was the occasional embezzlement of funds or falsification of vouchers, where to prosecute would involve the divulging of sensitive intelligence sources and methods. We appreciate that the guidelines for handling of reports of criminal violations should be most carefully developed jointly by the Agency and the Department of Justice to indicate clearly the extent to which the Agency should properly be authorized to conduct investigations in order to determine whether sufficient basis exists to submit reports to the Department of Justice. Clearly the final decision as to whether there should be a prosecution is solely the responsibility of the Department of Justice, after consideration of the Agency's views of the possible damage which would be done by revelation of intelligence sources and methods in such a prosecution.

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Recommendation (7)

a. Persons appointed to the position of Director of Central Intelligence should be individuals of stature, independence, and integrity. In making this appointment, consideration should be given to individuals from outside the career service of the CIA, although promotion from within should not be barred. Experience in intelligence service is not necessarily a prerequisite for the position; management and administrative skills are at least as important as the technical expertise which can always be found in an able deputy.

b. Although the Director serves at the pleasure of the President, no Director should serve in that position for more than 10 years.

Response

I endorse this recommendation. I would add the suggestion that such individual also not be a partisan political figure.

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Recommendation (8)

a. The Office of Deputy Director of Central Intelligence should be reconstituted to provide for two such deputies, in addition to the four heads of the Agency's directorates. One deputy would act as the administrative officer, freeing the Director from day-to-day management duties. The other deputy should be a military officer, serving the functions of fostering relations with military and providing the Agency with technical expertise on military intelligence requirements.

b. The advice and consent of the Senate should be required for the appointment of each Deputy Director of Central Intelligence.

Response

I endorse this recommendation though I envision its implementation in somewhat different fashion. With the establishment of a Deputy Director charged specifically with CIA management and representation responsibilities, the other (military) Deputy could most effectively perform the functions cited in the Commission Report if he were primarily concerned with management of those Intelligence Community responsibilities given to me under the President's letter of November 1971. Thus, I would propose that the existing position of Deputy to the DCI for the Intelligence Community be the basis for defining the responsibilities of the military Deputy Director. Should expected congressional consideration of the DCI's role within the Intelligence Community produce significant changes in this role, this recommendation will obviously be affected. While it might be undesirable to specify this in legislation, I believe that the Deputy Director principally concerned with management of CIA should be both a civilian and a career Agency employee. This last comment in no way reflects upon the high quality of the military Deputy Directors who have served this Agency in the past; it merely reflects the experience that such an outsider is normally less able to conduct the detailed management of the Agency contemplated by the Commission's recommendation than is a career Agency employee. This is especially true in the case in which a career Agency employee has been the Director, as in such

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situations there has been a natural tendency for management decisions to be made by the Director rather than delegated to the Deputy. CIA has, however, been exceedingly well served by the high quality of a number of Deputy Directors of military background who have made a unique contribution in intelligence matters for which they were particularly fitted as well as being excellent helpers and independent advisors to the Director, himself.

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Recommendation (9)

a. The Inspector General should be upgraded to a status equivalent to that of the deputy directors in charge of the four directorates within the CIA.

b. The Office of Inspector General should be staffed by outstanding, experienced officers from both inside and outside the CIA, with ability to understand the various branches of the Agency.

c. The Inspector General's duties with respect to domestic CIA activities should include periodic reviews of all offices within the United States. He should examine each office for compliance with CIA authority and regulations as well as for the effectiveness of their programs in implementing policy objectives.

d. The Inspector General should investigate all reports from employees concerning possible violations of the CIA statute.

e. The Inspector General should be given complete access to all information in the CIA relevant to his reviews.

f. An effective Inspector General's office will require a larger staff, more frequent reviews, and highly qualified personnel.

g. Inspector General reports should be provided to the National Security Council and the recommended executive oversight body. The Inspector General should have the authority, when he deems it appropriate, after notifying the Director of Central Intelligence, to consult with the executive oversight body on any CIA activity (see Recommendation 5).

Response

I concur in this recommendation.

a. The status of the Inspector General can be raised as recommended, although I believe the other recommendations made by the Commission with respect to the functions of the Inspector General are more fundamental.

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b. The Office of the Inspector General will be staffed by officers of the types described, both from inside the Agency and from outside the Agency.

c. The Inspector General will develop a program of periodic review of all offices within the United States as proposed.

d. The Inspector General will investigate all reports from employees concerning possible violations of the CIA statute and other applicable laws.

e. The Inspector General will be given complete access by specific regulation to all information in CIA relevant to his reviews.

f. The Inspector General is now studying the recommended expansion of his office and program and will develop a specific proposal for consideration.

g. Inspector General reports will be made available to the NSC and the recommended executive oversight body, as recommended.

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Recommendation (10)

a. The Director should review the composition and operation of the Office of General Counsel and the degree to which this office is consulted to determine whether the Agency is receiving adequate legal assistance and representation in view of current requirements.

b. Consideration should be given to measures which would strengthen the office's professional capabilities and resources including, among other things, (1) occasionally departing from the existing practice of hiring lawyers from within the Agency to bring in seasoned lawyers from private practice as well as to hire law school graduates without prior CIA experience; (2) occasionally assigning Agency lawyers to serve a tour of duty elsewhere in the government to expand their experience; (3) encouraging lawyers to participate in outside professional activities.

Response

I concur in this recommendation.

Significant changes in the composition of the Office of General Counsel and its relationship to all the activities of the Agency are already under way. The General Counsel is a regular participant in meetings of the Agency Management Committee and in my own management discussions with the Deputy Directors of the Agency. The General Counsel is in the process of reviewing all Agency regulations to assure that legal consultation is required in all sensitive situations and to assure that on policy decisions the General Counsel is consulted to ascertain if there are legal aspects to be considered. The Office of General Counsel has been removed from direct managerial functions undertaken in previous years and restricted to the function of independent legal advisor. The General Counsel is also taking steps toward having an outside review of his office for the purpose of developing recommendations on its size, composition, and method of operation. The Agency, within the last 18 months, has brought on board or has in process four lawyers from outside the Agency. I believe there should be a balance between bringing in lawyers from the outside and utilizing experienced officers from within the Agency who are professionally qualified as lawyers.

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The General Counsel has, in the past, looked into the possibility of assigning lawyers to serve a tour of duty elsewhere in the Government to expand their experience. This was not found practicable, in part because of the reluctance of other agencies to take on an attorney for a limited period knowing that it would have to release him at about the time he was becoming productive. Nevertheless, the General Counsel and I consider this a desirable proposal, and we will again look into this possibility. We will also look into the possibility of placing Agency lawyers on sabbatical tours with private law firms.

I endorse the recommendation that Agency lawyers be encouraged to participate in outside professional activities. This has been the policy of the Office of General Counsel and will continue to be so.

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Recommendation (11)

To a degree consistent with the need for security, the CIA should be encouraged to provide for increased lateral movement of personnel among the directorates and to bring persons with outside experience into the Agency at all levels.

Response

I concur in this recommendation but feel obliged to point out certain difficulties which will limit the degree to which the Agency will be able to conduct such programs. Over the past seven years, the Agency has been reducing its overall strength. This reduction has naturally limited the receptivity of employees to the arrival of lateral entrees. The Agency has made a particular point of ensuring the continued input of young people into the Agency during this period, thus creating additional pressures on the current levels. Nonetheless, in our Annual Personnel Plan specific goals are set and audited as to lateral entry into the component elements of the Agency of persons with outside experience at upper levels. This has been particularly pressed with respect to the entry of represenatatives of minority groups.

With respect to lateral movement of personnel among the directorates, the difficulty is raised less by security than by the complex mix of skills within the Agency. The clandestine case officer abroad, the analyst on economic or scientific subjects, the engineer developing a new technical system, and the finance, security or logistics specialists are generally not interchangeable. Despite this, the Annual Personnel Plan and the Agency's Personnel Development Plan address particular attention to a feasible level of rotation to break down parochialism and to improve the leadership potential of our personnel. During 1974, for example, 78 employees GS 14 and above and 87 employees in GS Grades 7 through 11 were transferred from one career service to another. Our goals for 1975 are higher.

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Recommendation (12)

a. The Agency should issue detailed guidelines for its employees further specifying those activities within the United States which are permitted and those which are prohibited by statute, Executive Orders, and NSC and DCI directives.

b. These guidelines should also set forth the standards which govern CIA activities and the general types of activities which are permitted and prohibited. They should, among other things, specify that:

-Clandestine collection of intelligence directed against United States citizens is prohibited except as specifically permitted by law or published Executive Order.

-Unlawful methods or activities are prohibited.

-Prior approval of the DCI shall be required for any activities which may raise questions of compliance with the law or with Agency regulations.

c. The guidelines should also provide that employees with information on possibly improper activities are to bring it promptly to the attention of the Director of Central Intelligence or the Inspector General.

Response

I concur in this recommendation. Present specific guidelines and regulations will be reviewed to ensure that they fully reflect the points covered by the recommendation. CIA will promulgate as regulations detailed guidelines specifying those activities within the United States which are permitted and those which are prohibited as specified in this recommendation. These issuances will be incorporated in a revised Handbook of Employee Conduct and Summary of Agency Authorities, which is circulated to each employee on entrance into the Agency and annually thereafter.

The new Handbook on Employee Conduct and Summary of Agency Authority will include materials specified in this section of the

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recommendation and will specify, as it has since 1973, that employees are to report immediately any possibly improper activities to the Director of Central Intelligence or the Inspector General.

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Recommendation (13)

a. The President should instruct the Director of Central Intelligence that the CIA is not to engage again in domestic mail openings except with express statutory authority in time of war. (See also Recommendation 23.)

b. The President should instruct the Director of Central Intelligence that mail cover examinations are to be in compliance with postal regulations, they are to be undertaken only in furtherance of the CIA's legitimate activities and then only on a limited and selected basis clearly involving matters of national security.

Response

I concur in the intent of this recommendation, although in form it is directed to the President rather than the Agency. It is fully consistent with the instructions issued by me on 29 August 1973 and will be reflected in internal Agency regulations as well as instructions.

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Recommendation (14)

a. A capability should be developed within the FBI, or elsewhere in the Department of Justice, to evaluate, analyze, and coordinate intelligence and counterintelligence collected by the FBI concerning espionage, terrorism, and other related matters of internal security.

b. The CIA should restrict its participation in any joint intelligence committees to foreign intelligence matters.

c. The FBI should be encouraged to continue to look to the CIA for such foreign intelligence and counterintelligence as is relevant to FBI needs.

Response

I concur in this recommendation as it affects CIA, reflecting current CIA practice. I defer to the Department of Justice and the FBI with respect to the matters affecting those agencies.

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Recommendation (15)

a. Presidents should refrain from directing the CIA to perform what are essentially internal security tasks.

b. The CIA should resist any efforts, whatever their origin, to involve it again in such improper activities.

c. The Agency should guard against allowing any component (like the Special Operations Group) to become so self-contained and isolated from top leadership that regular supervision and review are lost.

d. The files of the CHAOS project which have no foreign intelligence value should be destroyed by the Agency at the conclusion of the current congressional investigations, or as soon thereafter as permitted by law.

Response

I concur in the intent of the first two subparagraphs of this recommendation and note that it reflects the commitment made by me in my confirmation hearing.

I fully concur with subparagraph (c) and note that certain revisions have been made in Agency organization in the past two years toward this goal.

I fully concur with subparagraph (d).

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Recommendation (16)

The CIA should not infiltrate dissident groups or other organizations of Americans in the absence of a written determination by the Director of Central Intelligence that such action is necessary to meet a clear danger to Agency facilities, operations, or personnel and that adequate coverage by law enforcement agencies is unavailable.

Response

I concur in what I understand to be the intent of this recommendation but suggest somewhat more precision in its direction:

a. Recommendations 2 and 12(b) I believe should bar CIA from any infiltration activities for the clandestine collection of intelligence against United States citizens.

b. With respect to a concern about a clear danger to Agency facilities, operations or personnel, I believe that in addition to a determination by the Director of Central Intelligence, there should be a requirement for coordination with the FBI or other appropriate law enforcement agencies and that any CIA activity should be undertaken only in support of the duly authorized activity of such agency.

c. As written, this recommendation could be read as prohibiting CIA utilization of persons with either bona fide or assumed status as dissidents "or other organizations of Americans" even though the CIA activity might be directed exclusively against foreign intelligence targets. I do not believe that the use of American "cover" such as this should be eliminated but, rather, that reporting on the American activity in the process of building such "cover" should be prohibited.

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Recommendation (17)

All files on individuals accumulated by the Office of Security in the program relating to dissidents should be identified, and, except where necessary for a legitimate foreign intelligence activity, be destroyed at the conclusion of the current congressional investigations, or as soon thereafter as permitted by law.

Response

I concur in this recommendation.

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d. When appropriate, the DCI will consult with the Attorney General with respect to issuance of guidelines.

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Recommendation (18)

a. The Director of Central Intelligence should issue clear guidelines setting forth the situations in which the CIA is justified in conducting its own investigation of individuals presently or formerly affiliated with it.

b. The guidelines should permit the CIA to conduct investigations of such persons only when the Director of Central Intelligence first determines that the investigation is necessary to protect intelligence sources and methods the disclosure of which might endanger the national security.

c. Such investigations must be coordinated with the FBI whenever substantial evidence suggesting espionage or violation of a federal criminal statute is discovered.

Response

I concur in this recommendation. I suggest somewhat greater precision in it, however, as follows:

a. The Director of Central Intelligence should have as a base the same administrative authority over CIA employees as any departmental or agency chief. This should give him the right to conduct administrative investigations to ascertain whether or not a substantial security or management problem may exist.

b. In cases in which evidence suggesting espionage or violation of a Federal or State criminal statute is discovered, the FBI or appropriate local authorities should be informed and the Agency should undertake a supporting rather than primary role with respect to any further investigation.

c. Where the preliminary examination indicates the possibility of a security problem not likely to involve espionage or violation of a criminal statute, but reflecting on the suitability of continued access to sensitive intelligence sources and methods or suggesting corrective action with respect to such access, the CIA should be authorized to conduct an investigation using lawful methods of surveillance, provided there is coordination with the FBI.

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Recommendation (19)

a. In cases involving serious or continuing security violations, as determined by the Security Committee of the United States Intelligence Board, the Committee should be authorized to recommend in writing to the Director of Central Intelligence (with a copy to the National Security Council) that the case be referred to the FBI for further investigation, under procedures to be developed by the Attorney General.

b. These procedures should include a requirement that the FBI accept such referrals without regard to whether a favorable prosecutive opinion is issued by the Justice Department. The CIA should not engage in such further investigations.

Response

I endorse the sense of this recommendation but have several suggestions for modification:

a. While the Security Committee of the United States Intelligence Board could initiate a recommendation with respect to any level of security violation, the US Intelligence Board itself should be required to endorse a referral to the FBI for further investigation if the FBI thereby would be required to accept such referral without regard to whether a favorable prosecutive opinion is issued by the Justice Department.

b. As noted in Recommendation 18, I believe a distinction should be drawn between a possible violation of law (including the espionage law) wherein the FBI or local authorities should undertake the primary role in an investigation supported by the CIA and cases of apparent security vulnerability not constituting a violation of law wherein the CIA should be authorized to undertake the primary role in coordination with the FBI. The latter category should be restricted to CIA employees, contractors, etc., in knowing contact with the CIA. Similar authority to investigate employees of other intelligence agencies should be given to the heads of those agencies for situations of security vulnerability not amounting to possible violation of a criminal statute.

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Recommendation (20)

The CIA and other components and agencies of the intelligence community should conduct periodic reviews of all classified material originating within those departments or agencies, with a view to declassifying as much of that material as possible. The purpose of such review would be to assure the public that it has access to all information that should properly be disclosed.

Response

I concur in this recommendation. This recommendation contains the same injunction as Executive Order 11652 which provides for classification and declassification of national security information and material.

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Recommendation (21)

The Commission endorses legislation, drafted with appropriate safeguards of the constitutional rights of all affected individuals, which would make it a criminal offense for employees or former employees of the CIA willfully to divulge to any unauthorized person classified information pertaining to foreign intelligence or the collection thereof obtained during the course of their employment.

Response

On 23 April 1975 I submitted to the Office of Management and Budget proposed legislation in line with this recommendation. I had submitted similar legislation in January 1974, which was not introduced, and I have vigorously pursued the objectives of this proposal with the Congress, the Department of Justice, and other interested departments and agencies since that time. It has been evident to this Agency for many years that existing criminal law is inadequate and provides virtually no enforceable sanctions against disclosure of intelligence sources and methods to unauthorized persons. This is because to prosecute under existing law requires disclosure in open court of further sensitive information as well as confirmation of the information disclosed by the person being prosecuted. In very recent years, with the Government's inability to prosecute in well known cases of disclosure by former employees, the need for improved criminal legislation has become evident to many outside of the Intelligence Community. The legislation which I have proposed meets, I believe, all of the standards of this recommendation including particularly safeguards for the consititutional rights of all affected individuals. It would permit prosecution only of persons authorized to possess the information disclosed or who possessed it by virtue of an association with the Government. It specifically precludes prosecution of newsmen or other recipients of information disclosed in violation of the law.

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Recommendation (22)

The CIA should not undertake physical surveillance (defined as systematic observation) of Agency employees, contractors or related personnel within the United States without first obtaining written approval of the Director of Central Intelligence.

Response

I concur in this recommendation, but note that the requirement for the Director's prior written approval would apply to some activities by the Agency which the Commission did not find objectionable. These include surveillance of Agency employees in operational situations for their protection or to detect countersurveillance, surveillance of individuals who may be carrying substantial sums of money, or surveillance during the routine investigations mentioned in the response to Recommendation 18. Thus, I believe that the intent of this recommendation can best be met by adoption of detailed internal procedures which define those situations in which DCI approval for surveillance is required and those in which authority can be delegated to the Director of Security or other subordinate levels.

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Recommendation (23)

In the United States and its possessions, the CIA should not intercept wire or oral communications[1] or otherwise engage in activities that would require a warrant if conducted by a law enforcement agency. Responsibility for such activities belongs with the FBI.

Response

This recommendation suggests the prohibition within the US and its possessions of two kinds of activity which raise different considerations. The first is the interception of wire or oral communications, and the second is "activities that would require a warrant if conducted by a law enforcement agency." The latter is understood to mean unauthorized entries onto premises and all conduct other than the interception of wire or oral communications which would amount to a search or seizure.

I concur in the recommendation that CIA not engage in "activities that would require a warrant if conducted by a law enforcement agency." Since the Agency has no law enforcement functions, its use within the US of unauthorized entry or other methods which amount to a search or seizure is beyond its legal authority. Cases where the Agency's legitimate interests may call for such activities are infrequent and should be handled by the FBI upon CIA's request (see Recommendation 19).

In regard to the recommendation that CIA be prohibited from intercepting wire or oral communications within the US, I concur that responsibility for such activities belongs with the FBI. I recommend, however, that CIA be authorized to support such FBI activity in cases involving foreign intelligence approved by the Attorney General.

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[1] As defined in the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. Secs. 2510-20.

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In regard to possible intercept of communications in the course of equipment testing or the training of operators, see response to Recommendation 28.

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Recommendation (24)

The CIA should strictly adhere to established legal procedures governing access to federal income tax information.

Response

I concur in this recommendation. Agency regulations on liaison with the Internal Revenue Service will be revised to clarify the limits and procedures in dealing with the Service and for obtaining income tax information.

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Recommendation (25)

CIA investigation records should show that each investigation was duly authorized, and by whom, and should clearly set forth the factual basis for undertaking the investigation and the results of the investigation.

Response

I concur in this recommendation.

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Recommendation (26)

a. A single and exclusive high-level channel should be established for transmission of all White House staff requests to the CIA. This channel should run between an officer of the National Security Council staff designated by the President and the office of the Director or his Deputy.

b. All Agency officers and employees should be instructed that any direction or request reaching them directly and out of regularly established channels should be immediately reported to the Director of Central Intelligence.

Response

Given the concerns expressed in the chapter of which this recommendation is a part, I understand the purposes of the recommendation as being proper and desirable. The language of the recommendation however would appear to restrict unduly a number of normal relationships involving the provision of foreign intelligence support by CIA to the White House. I believe that the concerns expressed by the Commission would be adequately protected if implementation of the recommendation provided that rules and procedures be issued governing the provision of foreign intelligence support to the White House. These should cover, for example, such subjects as the normal exchange between the White House Situation Room and the CIA Operations Center; NSC Staff requests to the Directorates of Intelligence and Operations for comments on or contributions to NSC studies; requests that CIA provide communications for senior officials on foreign travels; requests by the Secret Service for assistance in protecting senior officials travelling abroad; and the normal interchange between CIA and the NSC on agreements regarding employees, professional and clerical, detailed to the NSC.

CIA officers involved in the provision of foreign intelligence support as outlined above would be under direct instruction to report to the DCI or the Inspector General any White House request which does not fall within the agreed list of activities as specified above.

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Recommendation (27)

In accordance with its present guidelines, the CIA should not again engage in the testing of drugs on unsuspecting persons.

Response

I concur in this recommendation, which reflects directives issued by me on 29 August 1973.

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Recommendation (28)

Testing of equipment for monitoring conversations should not involve unsuspecting persons living within the United States.

Response

While I endorse the intent of the Commission in making this recommendation, I believe it is so simple in form as to pose serious difficulties as a guide for actual testing practice. Many types of radio receivers for the collection of foreign intelligence are developed and tested by the CIA, and our personnel are trained in their operation. By their very nature, these receivers are sensitive enough to monitor inadvertently some US conversations in test situations and virtually nothing can be done to prevent this. Adequate acceptance and suitability testing of these systems requires that they be tested in realistic circumstances, and inevitably some conversations will be monitored, though no identification is made of the participants. The building of large scale simulated communications systems for test purposes would be expensive and impractical.

In my view, the guidelines for testing of equipment in the US established by us in August 1973 meet the purposes of the Commission's recommendation and serve as a more realistic guide to such activities. These provide that testing of intelligence equipment may be undertaken in the United States provided that no use of the information collected shall in any way abrogate the rights of US citizens as guaranteed under the Constitution of the United States. If it is essential to test equipment on an American communications system or other establishment, this may be done provided that no recordings of the material are retained or examined by any element other than the original test engineers. In this context the original test engineers constitute the engineers under contract to perform the tests and the Agency technical officers supervising the activity. Knowledge derived from the tests that relates to equipment performance but maintains anonymity of the data source may be exchanged with other elements of the Agency.

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Recommendation (29)

A civilian agency committee should be reestablished to oversee the civilian uses of aerial intelligence photography in order to avoid any concerns over the improper domestic use of a CIA-developed system.

Response

I concur in this recommendation and urge that it be accomplished speedily. I should note here that--contrary to the statement in the Commission's Report--a proposed agreement for continuing support in this area of the Environmental Protection Agency was not concluded because of that Agency's law enforcement responsibilities.

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Recommendation (30)

The Director of Central Intelligence and the Director of the FBI should prepare and submit for approval by the National Security Council a detailed agreement setting forth the jurisdiction of each agency and providing for effective liaison with respect to all matters of mutual concern. This agreement should be consistent with the provisions of law and with other applicable recommendations of this Report.

Response

I concur in this recommendation. A proposed National Security Council Intelligence Directive which bears on this subject has been submitted to the NSC for review. We will continue to review this matter to determine if other directives are appropriate to meet fully this recommendation.

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